

§ 1.752-3

26 CFR Ch. I (4-1-09 Edition)

\$100,000 debt is characterized as recourse under § 1.752-1(a) and is allocated to A under this section. LP then allocates the remaining \$119,000 of LLC's net value and LLC2's \$96,000 net value to its \$300,000 debt, and A is treated as bearing the economic risk of loss for a total of \$215,000 of the \$300,000 debt. As a result, \$215,000 of LP's \$300,000 debt is characterized as recourse under § 1.752-1(a) and is allocated to A under this section, and the remaining \$85,000 of LP's \$300,000 debt is characterized as nonrecourse under § 1.752-1(a) and is allocated as required by § 1.752-3. This example illustrates one reasonable method of allocating net values of disregarded entities among multiple partnership liabilities.

Example 4. Disregarded entity with interests in two partnerships. (i) In 2007, B forms a wholly owned domestic limited liability company, LLC, with a contribution of \$175,000. B has no liability for LLC's debts and LLC has no enforceable right to contribution from B. Under § 301.7701-3(b)(1)(ii) of this chapter, LLC is a disregarded entity. LLC contributes \$50,000 to LP1 in exchange for a general partnership interest in LP1, and \$25,000 to LP2 in exchange for a general partnership interest in LP2. LLC retains the \$100,000 in cash. Both LP1 and LP2 have taxable years that end on December 31 and, under both LP1's and LP2's partnership agreements, only LLC is required to make up any deficit in its capital account. During 2007, LP1 and LP2 incur partnership liabilities that are general obligations of the partnership. LP1 borrows \$300,000 (Debt 1), and LP2 borrows \$60,000 (Debt 2) and \$40,000 (Debt 3). Debt 2 is senior in priority to Debt 3. LP1 and LP2 make payments of only interest on Debts 1, 2, and 3 during 2007. As of the end of taxable year 2007, LP1 and LP2 each have a net taxable loss and must determine its partners' shares of partnership liabilities under §§ 1.705-1(a) and 1.752-4(d) as of December 31, 2007. As of that date, LLC's interest in LP1 has a fair market value of \$45,000, and LLC's interest in LP2 has a fair market value of \$15,000.

(ii) Because LLC is a disregarded entity, B is treated as the partner in LP1 and LP2 for federal tax purposes. Only LLC has an obligation to make a payment on account of Debts 1, 2, and 3 if LP1 and LP2 were to constructively liquidate as described in paragraph (b)(1) of this section. Therefore, under this paragraph (k), B is treated as bearing the economic risk of loss for LP1's and LP2's liabilities only to the extent of LLC's net value as of the allocation date, December 31, 2007.

(iii) LLC's net value with respect to LP1 is \$115,000 (\$100,000 cash + \$15,000 interest in LP2). Therefore, under paragraph (k)(1) of this section, B is treated as bearing the economic risk of loss for \$115,000 of Debt 1. Accordingly, \$115,000 of LP1's \$300,000 debt is characterized as recourse under § 1.752-1(a)

and is allocated to B under this section. The balance of Debt 1 (\$185,000) is characterized as nonrecourse under § 1.752-1(a) and is allocated as required by § 1.752-3.

(iv) LLC's net value with respect to LP2 is \$145,000 (\$100,000 cash + \$45,000 interest in LP1). Therefore, under paragraph (k)(1) of this section, B is treated as bearing the economic risk of loss with respect to Debts 2 and 3 only to the extent of \$145,000. Because Debt 2 is senior in priority to Debt 3, LP2 first allocates \$60,000 of LLC's net value to Debt 2. LP2 then allocates \$40,000 of LLC's net value to Debt 3. As a result, both Debts 2 and 3 are characterized as recourse under § 1.752-1(a) and allocated to B. This example illustrates one reasonable method of allocating the net value of a disregarded entity among multiple partnership liabilities.

(1) *Effective dates.* Paragraph (a), the last sentence of paragraph (b)(6), and paragraphs (h)(3) and (k) of this section apply to liabilities incurred or assumed by a partnership on or after October 11, 2006, other than liabilities incurred or assumed by a partnership pursuant to a written binding contract in effect prior to that date. The rules applicable to liabilities incurred or assumed (or subject to a binding contract in effect) prior to October 11, 2006 are contained in § 1.752-2 in effect prior to October 11, 2006, (see 26 CFR part 1 revised as of April 1, 2006).

[T.D. 8380, 56 FR 66351, Dec. 23, 1991; 57 FR 4913, Feb. 10, 1992; 57 FR 5054, Feb. 12, 1992; 57 FR 5511, Feb. 14, 1992; T.D. 9289, 71 FR 59672, Oct. 11, 2006]

§ 1.752-3 Partner's share of non-recourse liabilities.

(a) *In general.* A partner's share of the nonrecourse liabilities of a partnership equals the sum of paragraphs (a)(1) through (a)(3) of this section as follows—

(1) The partner's share of partnership minimum gain determined in accordance with the rules of section 704(b) and the regulations thereunder;

(2) The amount of any taxable gain that would be allocated to the partner under section 704(c) (or in the same manner as section 704(c) in connection with a revaluation of partnership property) if the partnership disposed of (in a taxable transaction) all partnership property subject to one or more nonrecourse liabilities of the partnership in full satisfaction of the liabilities and for no other consideration; and

(3) The partner's share of the excess nonrecourse liabilities (those not allocated under paragraphs (a)(1) and (a)(2) of this section) of the partnership as determined in accordance with the partner's share of partnership profits. The partner's interest in partnership profits is determined by taking into account all facts and circumstances relating to the economic arrangement of the partners. The partnership agreement may specify the partners' interests in partnership profits for purposes of allocating excess nonrecourse liabilities provided the interests so specified are reasonably consistent with allocations (that have substantial economic effect under the section 704(b) regulations) of some other significant item of partnership income or gain. Alternatively, excess nonrecourse liabilities may be allocated among the partners in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Additionally, the partnership may first allocate an excess nonrecourse liability to a partner up to the amount of built-in gain that is allocable to the partner on section 704(c) property (as defined under § 1.704-3(a)(3)(ii)) or property for which reverse section 704(c) allocations are applicable (as described in § 1.704-3(a)(6)(i)) where such property is subject to the nonrecourse liability to the extent that such built-in gain exceeds the gain described in paragraph (a)(2) of this section with respect to such property. This additional method does not apply for purposes of § 1.707-5(a)(2)(ii). To the extent that a partnership uses this additional method and the entire amount of the excess nonrecourse liability is not allocated to the contributing partner, the partnership must allocate the remaining amount of the excess nonrecourse liability under one of the other methods in this paragraph (a)(3). Excess nonrecourse liabilities are not required to be allocated under the same method each year.

(b) *Allocation of a single nonrecourse liability among multiple properties*—(1) *In general.* For purposes of determining the amount of taxable gain under paragraph (a)(2) of this section, if a partnership holds multiple properties subject

to a single nonrecourse liability, the partnership may allocate the liability among the multiple properties under any reasonable method. A method is not reasonable if it allocates to any item of property an amount of the liability that, when combined with any other liabilities allocated to the property, is in excess of the fair market value of the property at the time the liability is incurred. The portion of the nonrecourse liability allocated to each item of partnership property is then treated as a separate loan under paragraph (a)(2) of this section. In general, a partnership may not change the method of allocating a single nonrecourse liability under this paragraph (b) while any portion of the liability is outstanding. However, if one or more of the multiple properties subject to the liability is no longer subject to the liability, the portion of the liability allocated to that property must be reallocated among the properties still subject to the liability so that the amount of the liability allocated to any property does not exceed the fair market value of such property at the time of reallocation.

(2) *Reductions in principal.* For purposes of this paragraph (b), when the outstanding principal of a partnership liability is reduced, the reduction of outstanding principal is allocated among the multiple properties in the same proportion that the partnership liability originally was allocated to the properties under paragraph (b)(1) of this section.

(c) *Examples.* The following examples illustrate the principles of this section:

Example 1. Partner's share of nonrecourse liabilities. The AB partnership purchases depreciable property for a \$1,000 purchase money note that is nonrecourse liability under the rules of this section. Assume that this is the only nonrecourse liability of the partnership, and that no principal payments are due on the purchase money note for a year. The partnership agreement provides that all items of income, gain, loss, and deduction are allocated equally. Immediately after purchasing the depreciable property, the partners share the nonrecourse liability equally because they have equal interests in partnership profits. A and B are each treated as if they contributed \$500 to the partnership to reflect each partner's increase in his or her share of partnership liabilities (from \$0 to \$500). The minimum gain with respect to

an item of partnership property subject to a nonrecourse liability equals the amount of gain that would be recognized if the partnership disposed of the property in full satisfaction of the nonrecourse liability and for no other consideration. Therefore, if the partnership claims a depreciation deduction of \$200 for the depreciable property for the year it acquires that property, partnership minimum gain for the year will increase by \$200 (the excess of the \$1,000 nonrecourse liability over the \$800 adjusted tax basis of the property). See section 704(b) and the regulations thereunder. A and B each have a \$100 share of partnership minimum gain at the end of that year because the depreciation deduction is treated as a nonrecourse deduction. See section 704(b) and the regulation thereunder. Accordingly, at the end of that year, A and B are allocated \$100 each of the nonrecourse liability to match their shares of partnership minimum gain. The remaining \$800 of the nonrecourse liability will be allocated equally between A and B (\$400 each).

Example 2. Excess nonrecourse liabilities allocated consistently with reasonably expected deductions. The facts are the same as in *Example 1* except that the partnership agreement provides that depreciation deductions will be allocated to A. The partners agree to allocate excess nonrecourse liabilities in accordance with the manner in which it is reasonably expected that the deductions attributable to those nonrecourse liabilities will be allocated. Assuming that the allocation of all of the depreciation deductions to A is valid under section 704(b), immediately after purchasing the depreciable property, A's share of the nonrecourse liability is \$1,000. Accordingly, A is treated as if A contributed \$1,000 to the partnership.

Example 3. Allocation of liability among multiple properties. (i) A and B are equal partners in a partnership (PRS). A contributes \$70 of cash in exchange for a 50-percent interest in PRS. B contributes two items of property, X and Y, in exchange for a 50-percent interest in PRS. Property X has a fair market value (and book value) of \$70 and an adjusted basis of \$40, and is subject to a nonrecourse liability of \$50. Property Y has a fair market value (and book value) of \$120, an adjusted basis of \$40, and is subject to a nonrecourse liability of \$70. Immediately after the initial contributions, PRS refinances the two separate liabilities with a single \$120 nonrecourse liability. All of the built-in gain attributable to Property X (\$30) and Property Y (\$80) is section 704(c) gain allocable to B.

(ii) The amount of the nonrecourse liability (\$120) is less than the total book value of all of the properties that are subject to such liability (\$70 + \$120 = \$190), so there is no partnership minimum gain. § 1.704-2(d). Accordingly, no portion of the liability is allocated pursuant to paragraph (a)(1) of this section.

(iii) Pursuant to paragraph (b)(1) of this section, PRS decides to allocate the nonrecourse liability evenly between the Properties X and Y. Accordingly, each of Properties X and Y are treated as being subject to a separate \$60 nonrecourse liability for purposes of applying paragraph (a)(2) of this section. Under paragraph (a)(2) of this section, B will be allocated \$20 of the liability for each of Properties X and Y (in each case, \$60 liability minus \$40 adjusted basis). As a result, a portion of the liability is allocated pursuant to paragraph (a)(2) of this section as follows:

Partner	Property	Tier 1	Tier 2
A	X	\$0	\$0
	Y	0	0
B	X	0	20
	Y	0	20

(iv) PRS has \$80 of excess nonrecourse liability that it may allocate in any manner consistent with paragraph (a)(3) of this section. PRS determines to allocate the \$80 of excess nonrecourse liabilities to the partners up to their share of the remaining section 704(c) gain on the properties, with any remaining amount of liabilities being allocated equally to A and B consistent with their equal interests in partnership profits. B has \$70 of remaining section 704(c) gain (\$10 on Property X and \$60 on Property Y), and thus will be allocated \$70 of the liability in accordance with this gain.

The remaining \$10 is divided equally between A and B. Accordingly, the overall allocation of the \$120 nonrecourse liability is as follows:

Partner	Tier 1	Tier 2	Tier 3	Total
A	\$0	\$0	\$5	\$5
B	0	40	75	115

[T.D. 8380, 56 FR 66355, Dec. 23, 1991, as amended by T.D. 8906, 65 FR 64890, Oct. 31, 2000]

§ 1.752-4 Special rules.

(a) *Tiered partnerships.* An upper-tier partnership's share of the liabilities of a lower-tier partnership (other than any liability of the lower-tier partnership that is owed to the upper-tier partnership) is treated as a liability of the upper-tier partnership for purposes of applying section 752 and the regulations thereunder to the partners of the upper-tier partnership.

(b) *Related person definition—(1) In general.* A person is related to a partner